Supreme Court U.S.
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No. 01-1576

IN THE

Supreme Court of the United States

PEGGY FARRIOR,

Petitioner,

v.

WATERFORD BOARD OF EDUCATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

The sole issue presented by the Petition for a Writ of Certiorari is whether appellate courts should apply a de novo rather than an "abuse of discretion" standard when reviewing a district court's decision granting a new trial pursuant to Rule 59(a) of the Federal Rules of Civil Procedure. In her Petition, the Petitioner claims that the United States Court of Appeals for the Second Circuit erred by using the abuse of discretion standard to affirm the district court's granting of the Respondent's Rule 59(a) motion. The Petitioner argues that the Second Circuit should have instead employed a "greater degree of scrutiny," which she defines as "de novo review or some other form of close scrutiny." Petition for a Writ of Certiorari ["Petition"], p. 24. In fact, the Petitioner asserts that appellate courts "should be *required* to determine de novo whether a new trial order violated the Seventh Amendment," *Id.*, p. 26 (emphasis added).

The Petitioner contends that there is a conflict among circuit courts with respect to this question, going so far as to claim that "[a] majority of the circuits *insist* that orders granting new trials should be subject to greater scrutiny on appeal." *Id.*, p. 5 (emphasis added). Given the Petitioner's equating of "greater scrutiny" with de novo review, one might presume that this purported "majority" of courts had adopted a de novo standard for reviewing the granting of new trials. That, however, is not the case. In fact, every circuit court employs the abuse of discretion standard, and the Petitioner's claims of an inter-circuit conflict are, at best, chimerical.

The Petitioner also seeks to bolster her argument by characterizing the Second Circuit's review of her appeal as perfunctory or somehow incomplete. In granting the motion

for new trial, the district court set forth its reasoning in exhaustive detail. And, in affirming the district court, the Second Circuit clearly considered this comprehensive explication of the trial judge's rationale. In fact, the Second Circuit expressly stated that "the district court's opinion as a whole makes it clear that the right standard was applied and thus we can easily affirm the judgment." Petition, p. 2a. The mere fact that the Second Circuit did not replicate or otherwise regurgitate the trial court's reasoning in its own opinion is hardly a basis for accusing the appellate court of having "summarily concluded that the district court had not abused its discretion." *Id.*, p. 3.

In any event, this Court has already held in *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996), as well as in a number of prior cases, that abuse of discretion is the proper standard for reviewing the granting of new trials. The Petition presents no new legal arguments or factual permutations that would necessitate a reexamination of those decisions. In short, the Petitioner does not present any compelling justification for obtaining the extraordinary remedy that she seeks. The Second Circuit's decision was proper in all respects, and therefore the Respondent respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

I. THE QUESTION RAISED IN THE PETITION HAS ALREADY BEEN DECIDED BY THE COURT.

Rule 59(a) of the Federal Rules of Civil Procedure provides: "A new trial may be granted to all or any of the parties and on all or part of the issues . . . in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions

at law in the courts of the United States." Although the Petitioner claims otherwise, the appropriate standard for granting Rule 59 motions is well settled. In *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996), this Court held: " 'The trial judge in the federal system,' we have reaffirmed, 'has . . . discretion to grant a new trial if the verdict appears to [the judge] to be against the weight of the evidence.' " *Id.*, at 433 (quoting *Byrd v. Blue Ridge Rural Elec. Coop., Inc.*, 356 U.S. 525, 540 (1958)). *See also Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 279 (1989) (appellate courts "review the district court's determination under an abuse-of-discretion standard"); *Allied Chem. Corp., v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980) ("The authority to grant a new trial . . . is confided almost entirely to the exercise of discretion on the part of the trial court").

As Justice Ginsburg wrote for the majority in *Gasperini*, a trial court's authority to grant a new trial pursuant to Rule 59 "is large." 518 U.S. at 433 (citing 6A Moore's Federal Practice ¶ 59.02[2], pp. 59-44 to 59-46 (2d ed. 1996)). The justification for this authority lies in the recognition that " '[t]he exercise of [the trial court's power to set aside the jury's verdict and grant a new trial] is not in derogation of the right of trial by jury but is one of the historic safeguards of that right.' " 518 U.S. at 433 (quoting *Aetna Casualty & Surety Co. v. Yeatts*, 122 F.2d 350, 353 (4th Cir. 1941)). After all, " '[i]f it should clearly appear that the jury have committed a gross error . . . it as much the duty of the court to interfere, to prevent the wrong, as in any other case.' " 518 U.S. at 433 (quoting *Blunt v. Little*, 3 F. Cas. 760, 761-62 (No. 1,578) (CC Mass. 1822)). And from a practical perspective, "[t]rial judges have the 'unique opportunity to consider the evidence in the living courtroom context' . . .

while appellate judges see only the 'cold paper record.' " 518 U.S. at 438 (internal citations omitted). *See also Cone v. West Virginia Pulp & Paper Co.*, 330 U.S. 212, 216, 67 S. Ct. 752 (1947), quoted in *Becker v. ARCO Chemical Co.*, 207 F.3d 176, 180 (3d Cir. 2000) ("[W]hen reviewing the district court's decision to grant or deny a motion for a new trial, we must give substantial deference to the trial judge's decision 'who saw and heard the witnesses and has the feel of the case which no appellate printed transcript can impart' "). Thus, the Court reasoned in *Gasperini*:

> If we reverse, it must be because of an abuse of discretion . . . The very nature of the problem counsels restraint. . . . We must give the benefit of every doubt to the judgment of the trial judge.

518 U.S. at 438-39 (quoting *Dagnello v. Long Island R. Co.*, 289 F.2d 797, 806 (2d Cir. 1961)).

It cannot be disputed that the Court has established and has reaffirmed abuse of discretion as the appropriate standard to be employed by appellate courts when reviewing a district court's decision granting a new trial. And though the Petitioner now urges the Court to discard the abuse of discretion standard, she fails to provide any compelling justification for such a drastic reversal of this Court's long-standing precedent, which, as discussed, *infra*, is followed by all of the circuit courts. Consequently, the Petition for a Writ of Certiorari should be denied.

II. THERE IS NO CONFLICT AMONG THE CIRCUIT COURTS REGARDING THE ABUSE OF DISCRETION STANDARD.

As noted, the Petitioner seeks to have the Court proscribe appellate courts' application of the abuse of discretion standard when reviewing the granting of a new trial. The Petitioner asserts that when a Rule 59 motion has been granted, the reviewing courts should instead "be required to determine de novo whether a new trial order violated the Seventh Amendment." Petition, p. 26. In making these claims, the Petitioner either glosses over or outright ignores this Court's precedent. The Petitioner instead attempts to buttress her argument by asserting that there is an inter-circuit schism between the abuse of discretion and the de novo standards. Petition, p. 24. In fact, she goes so far as to contend that "[a] majority of the circuits *insist* that orders granting new trials should be subject to greater scrutiny on appeal." Petition, p. 5 (emphasis added). A review of the respective circuits' case law, however, quickly and clearly demonstrates that this simply is not true.

The Petitioner admits that the Second, Fourth and Seventh Circuits utilize the abuse of discretion standard when reviewing the granting of Rule 59(a) motions. Petition, pp. 21-23. She claims, however, that the First, Third, Fifth, Sixth, Eight, Eleventh and District of Columbia circuits have adopted this "greater scrutiny" standard, which, as noted, the Petitioner analogizes to a de novo standard of review. *Id.*, pp. 4-20. In fact, all of these circuits, as well as the Ninth and Tenth Circuits, employ the abuse of discretion standard.

For example, in *Kelley v. Airborne Freight Corp.*, 140 F.3d 335 (1st Cir. 1998), the First Circuit held that

" '[t]he trial judge has discretion to grant a new trial if the verdict appears to [the judge] to be against the weight of the evidence,' " *Id.*, at 355 (quoting *Gasperini*, 518 U.S. at 433), adding that " '[we] then review the district court's determination under an abuse-of-discretion standard.' " 140 F.3d at 355 (quoting *Browning-Ferris Indus., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 279 (1989)). *See also O'Rourke v. City of Providence*, 235 F.3d 713, 726 (1st Cir. 2001) ("The appellate court's review is for abuse of discretion"). Similarly, the Third Circuit has held: "As an appellate court, we apply the deferential 'abuse of discretion' standard to a district court's grant or denial of a motion for new trial." *McNaboe v. NVF Co.*, 276 F.3d 578, 2001 U.S. App. LEXIS 28578 *17 (3d Cir. 2001). *See also Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 365 (3d Cir. 1999) (appellate court reviews decision "whether to grant a new trial on the basis that the verdict was against the weight of the evidence for abuse of discretion"). The Third Circuit had previously noted: "Such deference is peculiarly appropriate in reviewing a ruling . . . [regarding] the weight of the evidence because the district court was able to observe the witnesses and follow the trial in a way that we cannot replicate by reviewing a cold record." *Roebuck v. Drexel Univ.*, 852 F.2d 715, 735 (3d Cir. 1988).

The Fifth Circuit has held: "Ultimately [a Rule 59(a)] motion invokes the sound discretion of the trial court, and appellate review of its ruling is quite limited. . . . With this in mind, we review the district court's rulings for abuse of discretion." *Streber v. Hunter*, 221 F.3d 701, 736 (citing *Sibley v. Lemaire*, 184 F.3d 481, 487 (5th Cir. 1999)). *See also Reddin v. Robinson Prop. Group*, 239 F.3d 756, 758-59 (5th Cir. 2001) (Although "[o]ur review of a district court's decision to grant a new trial is broader than our review

of a district court's denial of a new trial . . . the standard remains one of abuse of discretion"); *Woodfield v. Bowman*, 193 F.3d 354, 358 (5th Cir 1999) ("The decision to grant or deny a motion for a new trial will be disturbed only for abuse of discretion or misapplication of the law"). Additionally, the Sixth Circuit has held: "We review the grant or denial of a new trial for an abuse of discretion." *Preferred Properties v. Indian River Estates*, 276 F.3d 790, 798 (6th Cir. 2002). *See also Conte v. General Housewares Corp.*, 215 F.3d 628, 637 (6th Cir. 2000) ("[T]he district court's decision . . . to grant a new trial on the basis of the weight of the evidence . . . is reviewed by this court for an abuse of discretion").

Similarly, the Eighth Circuit has held: "The decision to grant a new trial is left to the sound discretion of the trial court and the court will not disturb the trial court's decision absent a clear showing of abuse of discretion." *Pullman v. Land O'Lakes, Inc.*, 262 F.3d 759, 762 (8th Cir. 2001) (citing *White v. Pence*, 861 F.2d 776, 780 (8th Cir. 1992)). *See also Children's Broadcasting Corp. v. Walt Disney Co.*, 245 F.3d 1008, 1017 (8th Cir. 2001) ("We review a conditional grant of a new trial for abuse of discretion"). Both the Ninth and the Tenth Circuits are also in accord. *See e.g.*, *Silver Sage Partners, LTD v. City of Desert Hot Springs*, 251 F.3d 814, 818-19 (9th Cir. 2001) ("We review a district court's grant of a new trial for an abuse of discretion"); *Weese v. Schukman*, 98 F.3d 542, 549 (10th Cir. 1996) ("We review the district court's decision to grant or deny a new trial motion under an abuse of discretion standard"). Similarly, the Eleventh Circuit also applies the abuse of discretion standard. *See, e.g., United States v. Ward*, 274 F.3d 1320, 1323 (11th Cir. 2001) ("[A] motion for new trial is reviewed for abuse of discretion on appeal");

Lipphardt v. Durango Steakhouse of Brandon, Inc., 267 F.3d 1183,1186 (11th Cir. 2001) ("We review a district court's grant of a new trial for abuse of discretion").

It is true that in *Tri County Industries v. District of Columbia*, 200 F.3d 836 (D.C. Cir. 2000), *cert. dismissed*, 531 U.S. 287 (2001), the circuit court referred to what it termed a "more searching inquiry," *Id.*, at 840, but the court never defined what such an inquiry entailed, and there is certainly no indication in its opinion that the court intended to adopt a de novo standard of review. Consequently, although the Petitioner relies upon *Tri County*, even a thorough reading of that decision leaves one to speculate as to the meaning and substance of this "more searching inquiry." At no point in its opinion, however, did the *Tri County* court indicate that it intended to discard or even to modify the abuse of discretion standard.

In fact, *Tri County* is not incompatible with the abuse of discretion standard. In *Gasperini v. Center for Humanities, Inc.*, 149 F.3d 137 (2d Cir. 1998), the Second Circuit noted that "[a]buse of discretion" may have different meanings in different contexts," *Id.*, at 141 (quoting Friendly, "Indiscretion About Discretion," 31 Emory L.J. 747, 764 (1982)), but with respect to the granting of a new trial, "[d]eference is 'traditionally accorded to [trial judges in] . . . such post-trial matters' . . . because such decisions turn on factors ' "so numerous, variable and subtle that the fashioning of rigid rules would be more likely to impair [the trial judge's] ability to deal fairly with a particular problem than to lead to a just result.' " " *Id.*, at 141 (quoting Friendly, "Indiscretion About Discretion," at 760-61, quoting in turn *United States v. McCoy*, 517 F.2d 41, 44 (7th Cir. 1975)). Similarly, in *Roland Machinery Co. v. Dresser Industries*, 749 F.2d 380

(7th Cir. 1984), Judge Posner wrote: "[T]he words [abuse of discretion] describe a range of standards . . . in which the amount of deference given the trial judge's rulings varies with the nature of the ruling." *Id.*, at 390.

As is evident, and contrary to the Petitioner's assertions to the contrary, there is no inter-circuit conflict regarding the abuse of discretion standard in the context of reviewing Rule 59(a) motions. The circuit courts are unanimous in holding that abuse of discretion is the appropriate standard to be applied when reviewing a district court's decision granting a motion for new trial. In so holding, the circuits have followed this Court's well-established line of precedent, culminating in *Gasperini*. Therefore, the Petition should be denied.

CONCLUSION

Therefore, for all of the foregoing reasons, the Respondent respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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